UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
WASHINGTON, D.C.

SYSCO GRAND RAPIDS LLC, Respondent and GENERAL TEAMSTERS LOCAL UNION NO. 406, INTERNATIONAL BROTHERHOOD OF TEAMSTERS (IBT) Charging Party	:	Cases 07-CA-197034 07-CA-197035 07-CA-197039

REPLY MEMORANDUM IN SUPPORT OF MOTION TO DISMISS

This is the Reply Memorandum of Sysco Grand Rapids LLC ("Sysco") in support of its motion to dismiss the complaint in the cases recited above. The litigation is primarily a succession of § 8(a)(5) charges alleging that Sysco failed to negotiate with Local 406, IBT, prior to changing terms and conditions of employment.

The trial in the litigation is scheduled for **April 24, 2018,** and as such, the necessity of the timely issuance of a rule to show cause is critical to permit the Board to resolve the instant motion.

Sysco filed its motion to dismiss on November 17, 2017. The Board permitted the General Counsel to file its opposition until January 16, 2018. This reply is timely filed on January 23, 2018.

The Board's opposition establishes it is unable to understand or unwilling to confront the foundation of the Respondent's motion. For the following reasons, the General Counsel's opposition fails to justify a denial of the pending motion.

1. The Failure of the General Counsel and the Charging Party to Except to the Administrative Law Judge's Decision and Recommended Order Prohibits them from Urging the Modification of that Decision in the Instant Litigation.

The General Counsel urges the Board to determine that it can prove that Sysco has an extant duty to bargain premised on a decision and recommended order of an Administrative Law Judge ("ALJ") which determined Sysco should have a *Gissel* obligation to Local 646, IBT. Critically, and at the heart of Sysco's argument, the General Counsel nor the Charging Party excepted to the ALJ's finding, decision and recommended order that Sysco had that obligation toward Local 646, IBT.

The General Counsel dedicates three pages of argument[1] mischaracterizing Sysco's basis for this motion. The General Counsel writes that Sysco's argument "relies almost entirely on a ministerial error"[2] and that Local 406, IBT plainly was the appropriate party referred to by the ALJ but that "in his decision and recommended order, the ALJ inadvertently referenced the Union as 'General Teamsters Local Union No. 646.'"[3] Of course, the ALJ did refer in his decision, recommended order and proposed notice to Local 646 exclusively and on numerous occasions. He never referenced the Charging Party here, Local 406. The General Counsel then repeats that this putative misnomer was a "ministerial error and not a material one."[4] Finally, he writes that he requested the "name of the Union be administratively corrected by the Board" in his brief.

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[1] Opposition, pp. 1-4.
[2] Opposition, p. 1.
[3] Opposition, p. 3.
[4] *Id.*

What the General Counsel does not acknowledge is that he never excepted or cross excepted to the ALJ's finding, decision or recommended order identifying Local 646. In fact, the General Counsel, nor the Charging Party here, filed **any** exceptions or cross-exceptions to the ALJ's finding, decision or recommended order. Now, they urge the NLRB to change the identity of the Charging Party in a pending appeal when they never excepted to the original determination by virtue of a footnoted argument in an Answering Brief in another case.[5]

First, there can be no doubt that a recommended order imposing a *Gissel* bargaining duty on a named, yet non-existent union,[6] is a material issue. An administrative agency, like a court, speaks through its orders. Here, the recommended order compels Sysco to bargain with Local 646 not 406.

Second, the General Counsel does not "except" to the ALJ's finding, decision or recommended order by virtue of footnoting an argument in its answering brief that was not the subject of an exception or cross-exception. As the Board has previously held

> Although the Respondent reiterates its contract-based defenses in its answering brief, it did not except to the judge's failure to dismiss the complaint on the additional ground that the contract permitted the assignment. The Board's Rules and Regulations do not permit a party to assert cross-exceptions in an answering brief. Accordingly, the Respondent waived its contract-based defenses.

The Bohemian Club, 351 NLRB 1065, fn. 6 (2007) (citations omitted).

The General Counsel, in footnote 2 of his answering brief, in the previous litigation currently under Board review, simply writes "To the extent such a clerical error cannot be rectified by the Board in issuing its decision, Counsel for the General

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[5] Id. at pp. 3-4.
[6] *See*, Opposition, p. 3, fn. 5.

Counsel **moves** that the caption, as well as all references to Local 646 be changed to Local 406 by the Board."[7] That is not an exception or cross-exception. That is an effort at a motion. And, as such, it not only fails to preserve the issue for consideration by the Board, it violates the Rules of the National Labor Relations Board.

Finally, and most importantly, the foundation of this motion, as written in the motion,[8] is that the General Counsel and the Charging Party are forbidden from urging the Agency to change any "matter" resolved by the ALJ in the previous litigation, including the identity of the Union, as neither the General Counsel nor the Union filed any exceptions to the ALJ's finding, decision and recommended order.[9] As summarized by the Sixth Circuit

> If timely and proper exceptions are not filed pursuant to 29 C.F.R. § 102.46, the findings of the ALJ 'automatically become the decision and order of the Board and become its findings, conclusions and order, and all objections and exceptions thereto [are] deemed waived for all purposes.' 29 C.F.R. § 102.48(a) (1989). It is only in cases of rare extenuating circumstances that the courts have waived the rules requiring the filing of exceptions within the time prescribed by the statue or extended by the Board.' *NLRB v. Ferraro's Bakery, Inc.*, 353 F.2d 366, 368 (6th Cir. 1965).

Brown v. NLRB, No. 89-5396, 1990 U.S. App. LEXIS 1543, at *22-23 (6th Cir. 1990).

So too, the Board has routinely declined to review challenges to an ALJ's decision that are not the subject of an exception. *See, Local 560, IBT*, 362 NLRB No. 183, 2015 NLRB LEXIS 649, *7-8 (2015) (As union did not except to finding "we find that the Union has waived any challenge to the Judge's finding that the Union violated Section 8(b)(4)(ii)(A). *See*, Section 102.46(b)(2)..."), *CC 1 Limited Partnership*, Cases

[7] Answering Brief of General Counsel, Sysco Grand Rapids LLC, Case 07-CA-146820, *et seq.*, p. 1, fn. 2.
[8] Sysco Motion to Dismiss, p. 6.
[9] Id., see, pp. 6-9.

24-CA-011018, et al., 2013 NLRB LEXIS 44, *2-3 (2013) ("Because the Employer failed to except to the judge's finding that the work stoppage was protected we find that the Employer waived that argument; therefore, its request for the Board to reconsider that portion of the decision is untimely. *See,* Section 102.46(b)(2)....") These decisions were explained by Member Cracraft in her dissent in *Ron E. Savoia Construction Co.*, 289 NLRB 200 (1988):

> Even though the Board may have the legal authority to act in the absence of exceptions, the general practice, as codified in the Board's rules, is to limit the scope of review to the issues raised by the parties. *See Anniston Yarn Mills*, 103 NLRB 1495 (1953) ("well-established Board practice" is to adopt a judge's findings to which no exceptions are filed); Sec. 102.46(b)(2) of the Board's Rules and Regulations ("Any exception . . . not specifically urged shall be deemed to have been waived."). Consistent with the logic of the rules, the Board has rejected exceptions which fail to comply with the requirement that an excepting party must set forth with specificity the portions of a judge's decision to which it excepts and the basis for the exceptions. *See Bonanza Sirloin Pit*, 275 NLRB 310 (1985), and cases cited therein. A fortiori when no party has raised an issue, the Board should decline to do so on behalf of any party. *See Springfield Transit Management*, 281 NLRB No. 17 (Aug. 14, 1986), in which the Board declined to pass on a jurisdictional issue, despite the recent issuance of *Res-Care, Inc.*, 280 NLRB No. 78 (June 24, 1986), because no party raised the matter in its exceptions.

Id., 289 NLRB at 200.

Here, as recited in Sysco's motion, the General Counsel and Charging Party made no exception to any finding of the ALJ. Those findings which were not excepted to become and are the final decision of the Board. The General Counsel and Charging Party were forbidden by regulations from urging a decision or determination inconsistent with the findings they did not except to. And certainly, the Respondent cannot be held

to violate the Act *ex post facto* because it did not bargain with a labor organization which **no authority** has determined it has an extant duty to bargain with.

The General Counsel's argument is not merely wrong; it violates the law.

2. The Regional Director's Reliance Upon the ALJ Decision in Issuing the Complaint is Indefensible.

Sysco has moved to dismiss the allegations in paragraphs 7 through 10 of the instant Complaint because they were alleged and litigated in paragraphs 24 through 27 of the prior litigation treated by ALJ Rosas. *See,* Motion to Dismiss, p. 8. As such, those allegations are issue precluded and must be dismissed.

The General Counsel mischaracterizes Sysco's argument. He writes that Sysco:

> argues that, because of the typographical error in the ALJ's decision regarding the Union's local number, the General Counsel cannot rely on the ALJ's bargaining order to establish the bargaining obligation necessary to establish a violation of 8(a)(5).

Opposition, p. 4.

That argument is false. As reiterated above, Sysco has and does argue that the ALJ never ordered Sysco to bargain with the Charging Party here, that the General Counsel and Charging Party did not except to the ALJ's decision and that, by operation of the Board's rules, both of these parties are prohibited from urging a result which is inconsistent with that extant decision in any further proceeding. § 102.46(a)(1)(ii), § 102.46(f).

Moreover, and without any recited authority, the General Counsel writes that he has **no obligation** to comply with NLRB rules by filing exceptions to a decision which orders a Respondent to bargain with the **wrong** Union as that is an immaterial and "typographical error."

> Such a ministerial error does not require the filing of exceptions, as it is well within the Board's authority to administratively remedy such an error when making its final determination on the record developed by the ALJ.

Opposition, p. 5.

The argument that the General Counsel is exempted from compliance with § 102.46(a) is contrary to law and fact. Section 102.46(a) applies to "any party" and does not exempt "any party" from compliance therewith. Similarly, the ramifications of failing to comply with the obligations of filing exceptions is not constrained to only Employers as the General Counsel appears to argue. "All Parties" includes the General Counsel. A determination that the Agency is uniquely excused from complying with its own regulations would be outrageous and contrary to any measure of justice.

The General Counsel goes on to argue that under

> Section 10(d) of the Act and Section 102.49 of the Board's Rules and Regulations, the Board may, at any time, "upon reasonable notice modify or set aside, in whole or in part, any findings of fact, conclusions of law, or order made or issued by it." The General Counsel has requested such a modification take place . . . .

Opposition, p. 5.

However, the General Counsel omits critical language from the Rule and seeks a result contrary to its purpose. The Rule actually states:

> Within the limitations of the provisions of § 10(c) of the Act, and § 102.48, until a transcript of the record in a case is filed in a court within the meaning of Section 10 of the Act, the Board may at any time upon reasonable notice modify or set aside....

First, the Rule expressly applies "within the limitations of ... § 102.48." Section 102.48(a), as previously noted, provides that if no exceptions are filed the ALJ's decision automatically becomes the decision and order of the Board and all objections and exceptions must be deemed waived for all purposes. Again, the General Counsel and Charging Party made no exceptions. Section 102.49, by its own terms, is limited by the constraints of § 102.48. Having failed to file an exception to the most material finding in the case, the General Counsel, like any other party, has waived this objection and § 102.49, as constrained by § 102.48, does not authorize a modification of this finding.

Second, the transcript of the record in the previous litigation is filed in a court within the meaning of § 10 of the Act. Indeed, the General Counsel has instituted an action in the Western District of Michigan pursuant to § 10 of the Act to, inter *alia*, compel Sysco to negotiate with Local 406 of the Teamsters premised upon the ALJ Rosas decision. *Morgan v. Sysco Grand Rapids LLC*, Case 1:17-cv-00635-JTN-ESC. In that litigation the General Counsel has put into the record a transcript of the record of the administrative proceedings. Ex. 5, Docket Entry 4. For this reason, as well, § 102.49 has no application to either this or the previous litigation and the Board may not modify the ALJ's findings by operation of its own regulation.

3. The General Counsel's Effort to Litigate Allegations Previously Litigated is Issue Precluded.

As noted *supra.*, Sysco's motion seeks, *inter alia*, to dismiss paragraphs 7 through 10 of the instant Complaint as **the same** allegations were made in paragraphs

24 through 27 of the previous litigation and are thereby issue precluded.[10] The General Counsel describes this motion as follows:

> Respondent appears to argue that, at any hearing for the above-captioned cases, the principles of *res judicata* should preclude the General Counsel from presenting any evidence related to the correct name of the Union in the prior proceeding.

Opposition, p. 6.

To insure that the Board is not confused by the General Counsel's mischaracterization of Sysco's motion, Sysco seeks to dismiss paragraphs 7 through 10 of the instant Complaint because the same allegations have already been litigated as it plainly wrote on November 17, 2017.

Moreover, the General Counsel has utterly failed to meet his burden, much less address it, to demonstrate any material changes which have occurred since March 2, 2017, when the ALJ's decision was issued justifying relitigation of these allegations as required by the Board in *Wolf Creek Nuclear Operating Corp.*, 365 NLRB No. 55 (2017).

4. Where A Union Loses An Election And There Is No Bargaining Order Requiring An Employer To Bargain With A Union, There Can Be No Violation Of § 8(a)(5).

The General Counsel makes the argument at page 7 of his opposition that assuming the General Counsel cannot rely upon the previous ALJ decision recommending a bargaining order with Local 646, IBT, Sysco still has a "putative bargaining obligation pending the final decision of the Board." The parties in the previous litigation did not except to the fact that the employees of Sysco Grand Rapids voted against union representation. *See*, Ex. 1, p. 24. Therefore, it is curious how the General Counsel could argue that in the absence of a certified election result for union

[10] Motion to Dismiss, p. 8.

representation and in the absence of a bargaining order with the Charging Party the Employer could violate its duty to bargain? The General Counsel simply writes that:

> The Board has long held that an Employer acts at its peril in refusing to bargain with a union while the union's status is being contested.

Opposition, p. 7.

The General Counsel then cites in support of this argument precedent in cases where the union requesting bargaining had won a representational election (*L. Suzio Concrete Co.*, 325 NLRB 392, 396 (1998) and *Clements Wire & Mfg. Co.*, 257 NLRB 1058 (1981)). Of course, in the instant matter, the employees of Sysco have **never** voted to be represented by any union, including the Charging Party, and hence the reason why the General Counsel solicited a bargaining order in the previous litigation.

Next, the General Counsel argues that administrative law judges have regularly relied upon prior administrative law judge decisions to determine whether a bargaining obligation exists under *Gissel.* In support of this argument the General Counsel cites *Cast-Matic Corp.,* 350 NLRB 1270, 1334 (2007). In *Cast-Matic,* the ALJ held that a previous ALJ held that the charging party – not another union as in this case – was determined to be the collective bargaining representative of the employer's employees. Here, of course, no ALJ has determined that the Employer owes a duty to bargain with the Charging Party. More importantly, the decision cited by the General Counsel was expressly rejected by the Board. *Id.*, 350 NLRB at 1271. The Board concluded that the bargaining order was inappropriately granted and as such no § 8(a)(5) violation occurred. The Board wrote:

> Relying on the Gissel bargaining order recommended in *Intermet I,* the judge found that the Respondent violated Section 8(a)(5) and (1) by unilaterally changing terms and

> conditions of its employees' employment, dealing directly with its employees, refusing to provide information requested by the Union, and refusing to bargain with the Union. We disagree. In light of our reversal of the recommended remedial bargaining order in *Intermet I,* we find that the Respondent did not have an obligation to bargain with the Union as the exclusive collective-bargaining representative of its employees. *See Desert Toyota*, 346 NLRB No. 4, slip op. at 1 (2005). Therefore, it did not violate the Act by refusing to bargain with or to provide information to the Union, nor did it violate the Act by dealing directly with its employees about, or making unilateral changes to, their terms and conditions of employment. Accordingly, we dismiss these allegations.

Id.

Similarly, the Board overturned the ALJ in the second cited case *Desert Toyota II on the same basis. T-West Sales & Services,* 346 NLRB 132 (2005).

As such, in the first two decisions cited by the General Counsel, the Board overruled the ALJ's adoption of the "principle" the General Counsel asks the Board to adopt now. Finally, the General Counsel cites to *Detroit Newspapers,* 326 NLRB 782, n. 4 (1998). In that decision there is no footnote 4 so we presume the General Counsel is referring to footnote 3 which states:

> In finding that the striking employees here were either unfair labor practice strikers or in sympathy with such strikers, the judge relied upon the decision of Administrative Law Judge Thomas R. Wilks, in a case then pending before us, for the finding that the strike at issue was an unfair labor practice strike. The judge here recognized that the Board's review of Judge Wilks' decision would be the final administrative determination of this issue, and that a decision in the present case would be contingent on the Board's decision in the earlier case. *See Columbia Portland Cement Co.*, 303 NLRB 880, 882 (1991), *enfd.* 979 F.2d 460 (6th Cir. 1992) (Board relied on its prior determination that strike was an unfair labor practice strike). Since then, for the reasons set forth in *Detroit Newspapers, 326 NLRB No. 64* (Aug. 27, 1998), **we have affirmed Judge Wilks' finding** that the

> strike in question was an unfair labor strike. Consequently, we review the judge's findings here in light of that action.

Id. at n. 3. (emphasis added).

As established in the emboldened portion of the footnote, the Board was relying upon its **own** determination in affirming the ALJ, not the ALJ's decision as the General Counsel represents. Also, as noted, this decision of the NLRB was not enforced by the D.C. Circuit upon review. As such, the General Counsel cites no standing precedent or logical basis for its argument.

5. The Facts Pled By The General Counsel Of Direct Dealing Do Not Constitute Direct Dealing.

The General Counsel argues that there may be a set of facts which somehow could establish Sysco engaged in direct dealing depending upon context, statements and other factual determinations and as such paragraph 14 of his Complaint should not be dismissed.

The General Counsel misses the crucial point. Assuming the facts pled, even in the most favorable light, the General Counsel's allegations do not constitute a violation of the Act. The Complaint alleges that Sysco ". . . bypassed the Union and dealt directly with employees in the Unit by distributing to employees and requiring them to sign a form acknowledging that Respondent's safety-cone policy described in Paragraph 13, was a term and condition of employment." Complaint, ¶ 14.

Even assuming there were a duty to bargain, as long as the facts established at trial **conform** to the allegation in the Complaint, there is no establishment of a violation of the Act. This is because:

> Simply notifying the employees that a unilateral change will affect them does not constitute illegal direct dealing....

Sonic Automotive, 343 NLRB 1058, 1067 (2004).[11]

This is because the employer did not **negotiate** with the employees or a representative of the employees other than their certified bargaining agent. Rather, the employer "simply followed a predetermined course in implementing" the terms. *Id.* As explained in more detail in Sysco's motion at pages 12 through 14, it is the absence of bargaining – or direct dealing – that is fatal to the General Counsel's objection. Here, the General Counsel alleges that Sysco distributed a policy to employees and "required them to sign" an acknowledgement form. There is no allegation of negotiation; there is an allegation the policy was *fait accompli*. The only way the General Counsel could survive this motion is to materially change the alleged facts supporting the Complaint and that

[11] The General Counsel argues that "there is certainly Board precedent finding the same or similar conduct unlawful under Section 8(a)(5)" at p. 8 of his opposition citing two NLRB decisions which do not support the argument. In *Heck's Inc.,* 293 NLRB 1111, 1120 (1989), the Board found that an Employer violated § 8(a)(1) of the Act when it "requested" employees to promise in writing to be bound by the Employer's anti-union policy stating "(f)or these reasons and others, we do not want any of our Employees to be represented by a Union." Id. 293 NLRB at 1119-1120. The Board did **not** conclude this "request" constituted "direct dealing" under the Act. As such, contrary to the General Counsel's allegation, the Board did **not** find such conduct to be direct dealing in violation of § 8(a)(5).

In the other opinion, *United Cerebral Palsy,* 347 NLRB 603 (2006), the Board wrote that when an Employer with an ongoing bargaining relationship distributed an employee handbook to its Employees with an acknowledgement that "they had received the handbook and that they agreed to comply with its terms . . . (which) essentially requires the Employees to agree that the Respondent may unilaterally change terms and conditions of employment the Employer bypassed the Union." *Id.*, 347 NLRB at 608.

Subsequently, in *Windstream Corp.*, 355 NLRB 406 (2010), the NLRB affirmed its prior opinion relying upon the *Sonic Automotive* standard when it rejected a direct dealing claim "because it did not invite the Employees to bypass their representative and negotiate with the Respondent over any term or condition of employment, nor did it undermine the Union's role as the Employees' exclusive bargaining representative by requiring the Employees to agree, in advance, to future unilateral changes [distinguishing *United Cerebral Palsy*]." *Id.* 352 NLRB 44, 51, *aff'd.* after remand, 355 NLRB 406 (2010). It is also important to note that the General Counsel has possession of the subject acknowledgments and is fully aware that they do not require the Employees to agree to future unilateral changes which is fatal to this allegation. *See*, Sysco's position statement and document production, May 30, 2017. As such, the current state of NLRB precedent continues to require an invitation to bargain and/or an agreement, in advance, to future unilateral changes to substantiate a direct dealing charge, neither of which are alleged here and both of which are inconsistent with the Complaint's allegations.

inconsistency would be damning as well as even the General Counsel is not permitted to make up the facts to conform to the alleged violation of law.

CONCLUSION

The instant motion draws a bead on the issue of parity. For the Board to retain credibility in the enforcement of the Act, all parties who appear before the Board – including the General Counsel – must receive equal treatment. Employers have long been aware that if they fail to except to a finding or determination of an Administrative Law Judge, that argument has been waived and it will not be considered by the Board or the courts. The General Counsel declines to even explain the reason for his failure to except from the ALJ's findings and determinations. He apparently feels entitled to be excused. The Board should disabuse any party of that sense of entitlement in equal measure – including the General Counsel.

Respectfully submitted on this 23rd day of January, 2018.

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CERTIFICATE OF SERVICE

This is to certify that on this 23rd day of January, 2018, I filed a copy of the foregoing **Reply Memorandum in Support of Motion to Dismiss** with the Office of the Executive Secretary, National Labor Relations Board using the Board's E-Filing System. I further certify that at the same time, I served a copy of the **Reply Memorandum In Support of Motion to Dismiss** on the following via electronic mail and regular U.S. mail as follows:

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EXHIBIT 5

United States District Court
Western District of Michigan (Southern Division (1))
CIVIL DOCKET FOR CASE #: 1:17-cv-00635-JTN-ESC

Morgan v. Sysco Grand Rapids, LLC
Assigned to: Judge Janet T. Neff
Referred to: Magistrate Judge Ellen S. Carmody
Cause: 29:160(1) National Labor Relations Act

Date Filed: 07/12/2017
Jury Demand: None
Nature of Suit: 720 Labor: Labor/Mgt. Relations
Jurisdiction: U.S. Government Plaintiff

petitioner

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Date Filed	#	Docket Text
07/12/2017	1	COMPLAINT *titled as Petition for Preliminary Injunction Under Section 10(j) of the National Labor Relations Act* with Exhibits 1-16 against Sysco Grand Rapids, LLC filed by Terry A Morgan (Carlson, Steven) Modified text on 7/12/2017 (ns). (Entered: 07/12/2017)
07/12/2017	2	BRIEF by petitioner Terry A Morgan re 1 *Brief in Support of Temporary Injunction Under Section 10(j) of the National Labor Relations Act* (Carlson, Steven) (Entered: 07/12/2017)
07/12/2017	3	NOTICE that this case has been assigned Janet T. Neff (ns) (Entered: 07/12/2017)
07/12/2017		SUMMONS NOT ISSUED as to respondent Sysco Grand Rapids, LLC ; *summons not required for Petition for Injunction Under Section 10(j)* (ns) (Entered: 07/12/2017)
07/12/2017	4	EXHIBIT 17 re 1 *(Administrative Hearing Record)* by petitioner Terry A. Morgan (Attachments: # 1 Exhibit 17 (Part 1), # 2 Exhibit 17 (Part 2), # 3 Exhibit 17 (Part 3), # 4 Exhibit 17 (Part 4), # 5 Exhibit 17 (Part 5), # 6 Exhibit

		17 (Part 6), # 7 Exhibit 17 (Part 7), # 8 Exhibit 17 (Part 8), # 9 Exhibit 17 (Part 9), # 10 Exhibit 17 (Part 10), # 11 Exhibit 17 (Part 11), # 12 Exhibit 17 (Part 12), # 13 Exhibit 17 (Part 13), # 14 Exhibit 17 (Part 14), # 15 Exhibit 17 (Part 15), # 16 Exhibit 17 (Part 16), # 17 Exhibit 17 (Part 17), # 18 Exhibit 17 (Part 18), # 19 Exhibit 17 (Part 19), # 20 Exhibit 17 (Part 20)) (Carlson, Steven) Modified text on 7/13/2017 (ns). (Entered: 07/12/2017)
07/12/2017	5	PROOF OF SERVICE by petitioner Terry A. Morgan re Exhibit,, 4 , complaint 1 , Brief (Related Document) 2 (Carlson, Steven) (Entered: 07/12/2017)
07/14/2017		(NON-DOCUMENT) ATTORNEY APPEARANCE of Michael L. Fayette on behalf of intervenor-plaintiff General Teamsters Union, Local No. 406 ; party General Teamsters Union, Local No. 406 added (Fayette, Michael) (Entered: 07/14/2017)
07/25/2017		(NON-DOCUMENT) ATTORNEY APPEARANCE of Forrest H. Roles on behalf of respondent Sysco Grand Rapids, LLC (Roles, Forrest) (Entered: 07/25/2017)
07/25/2017	6	ORDER re petition for preliminary injunction 1 : response due on or before 8/14/2017; reply, if any, due not later than 14 days after response; hearing set for 10/10/2017 at 01:30 PM at 401 Federal Building, Grand Rapids, MI before Judge Janet T. Neff; signed by Judge Janet T. Neff (Judge Janet T. Neff, rmw) (Entered: 07/25/2017)
07/25/2017		(NON-DOCUMENT) ATTORNEY APPEARANCE of Mark Anthony Carter on behalf of respondent Sysco Grand Rapids, LLC (Carter, Mark) (Entered: 07/25/2017)
07/26/2017		(NON-DOCUMENT) ATTORNEY APPEARANCE of Jason M. Renner on behalf of respondent Sysco Grand Rapids, LLC (Renner, Jason) (Entered: 07/26/2017)
07/26/2017		(NON-DOCUMENT) ATTORNEY APPEARANCE of Sarah Riley Howard on behalf of intervenor-plaintiff Local 406 General Teamsters Union (Howard, Sarah) (Entered: 07/26/2017)
08/03/2017	7	REQUEST for pre-motion conference by respondent Sysco Grand Rapids, LLC by respondent Sysco Grand Rapids, LLC; (Attachments: # 1 Attachment Certificate of Service) (Renner, Jason) (Entered: 08/03/2017)
08/03/2017	8	MOTION for extension of time to file answer re 1 by respondent Sysco Grand Rapids, LLC; (Renner, Jason) (Entered: 08/03/2017)
08/03/2017	9	CERTIFICATE regarding compliance with LCivR 7.1(d) re MOTION for extension of time to file answer re 1 8 filed by Sysco Grand Rapids, LLC (Renner, Jason) (Entered: 08/03/2017)
08/08/2017	10	ORDER granting 8 motion to extend time; signed by Judge Janet T. Neff (Judge Janet T. Neff, rmw) (Entered: 08/08/2017)
08/10/2017	11	RESPONSE TO REQUEST for pre-motion conference by respondent Sysco Grand Rapids, LLC 7 *Petitioner's Response to Sysco Grand Rapids LLC's Pre-*

		Motion Conference Request ; filed by Terry A. Morgan filed by Terry A. Morgan (Carol, Colleen) (Entered: 08/10/2017)
08/11/2017	12	ORDER scheduling a pre-motion conference regarding document number 7 : pre-motion conference is set for 10/10/2017 at 01:30 PM at 401 Federal Building, Grand Rapids, MI before Judge Janet T. Neff; the attorneys handling the matter for trial are required to be present; signed by Judge Janet T. Neff (Judge Janet T. Neff, rmw) (Entered: 08/11/2017)
08/11/2017	13	NOTICE cancelling 10/10/2017 hearing re 1 (Judge Janet T. Neff, rmw) (Entered: 08/11/2017)
09/06/2017	14	PROPOSED REQUEST for pre-motion conference by petitioner Terry A. Morgan *Motion to Reschedule Pre-Motion Conference* by petitioner Terry A. Morgan; (Carol, Colleen) (Entered: 09/06/2017)
09/06/2017	15	CERTIFICATE regarding compliance with LCivR 7.1(d) re PROPOSED REQUEST for pre-motion conference by petitioner Terry A. Morgan *Motion to Reschedule Pre-Motion Conference* 14 *Certificate of Compliance with Local Civil Rule 7.1(d)* filed by Terry A. Morgan (Carol, Colleen) (Entered: 09/06/2017)
09/12/2017	16	RESPONSE in opposition to PROPOSED REQUEST for pre-motion conference by petitioner Terry A. Morgan *Motion to Reschedule Pre-Motion Conference* 14 filed by Sysco Grand Rapids, LLC (Attachments: # 1 Exhibit A) (Renner, Jason) (Entered: 09/12/2017)
09/15/2017	17	ORDER denying 14 motion to reschedule pre-motion conference; signed by Judge Janet T. Neff (Judge Janet T. Neff, rmw) (Entered: 09/15/2017)
10/10/2017	18	MINUTES of pre-motion conference re 7 held before Judge Janet T. Neff (Court Reporter: Kathy Anderson) (Judge Janet T. Neff, clb) (Entered: 10/10/2017)
10/10/2017	19	PRE-MOTION CONFERENCE ORDER setting forth the briefing schedule re anticipated motion to dismiss; signed by Judge Janet T. Neff (Judge Janet T. Neff, clb) (Entered: 10/10/2017)
11/01/2017	20	TRANSCRIPT of Premotion Conference Proceedings held October 10, 2017 before Honorable Janet T. Neff; NOTE: this transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the release of transcript restriction date; after that date it may be obtained through PACER; under the Policy Regarding Transcripts the parties have 14 days within which to file a Notice of Intent to redact, and 21 days within which to file a Redaction Request; if no Transcript Redaction Request is filed, the court will assume redaction of personal identifiers is not necessary and this transcript will be made available via PACER after the release of transcript restriction set for 1/30/2018 ; redaction request due 11/22/2017 (Court Reporter-Transcriptionist: Anderson, Kathy (616) 914-2384) (Entered: 11/01/2017)
11/07/2017	21	PROOF OF SERVICE by respondent Sysco Grand Rapids, LLC for Respondent's Motion to Dismiss Petition for Preliminary Injunction, Brief in Support of Motion to Dismiss Petition for Preliminary Injunction, and corresponding Exhibits 1 through 12 (Renner, Jason) (Entered: 11/07/2017)

12/04/2017	22	PROOF OF SERVICE by petitioner Terry A. Morgan for Response to 12(b)(6) Motion (Carol, Colleen) (Entered: 12/04/2017)
12/18/2017	23	MOTION to dismiss *Petition for Preliminary Injunction* by respondent Sysco Grand Rapids, LLC; (Attachments: # 1 Exhibit 1, # 2 Exhibit 2, # 3 Exhibit 3, # 4 Exhibit 4, # 5 Exhibit 5, # 6 Exhibit 6, # 7 Exhibit 7, # 8 Exhibit 8, # 9 Exhibit 9, # 10 Exhibit 10, # 11 Exhibit 11, # 12 Exhibit 12) (Renner, Jason) (Entered: 12/18/2017)
12/18/2017	24	REPLY to response to motion 23 filed by Sysco Grand Rapids, LLC (Renner, Jason) Modified text on 12/19/2017 (ems). (Entered: 12/18/2017)
12/18/2017	25	JOINT STATEMENT of material facts re MOTION to dismiss *Petition for Preliminary Injunction* 23 (Renner, Jason) (Entered: 12/18/2017)
12/18/2017	26	JOINT EXHIBIT BOOK re MOTION to dismiss *Petition for Preliminary Injunction* 23 (Attachments: # 1 Exhibit 1, # 2 Exhibit 2, # 3 Exhibit 3, # 4 Exhibit 4) (Renner, Jason) (Entered: 12/18/2017)
12/18/2017	27	RESPONSE TO MOTION to dismiss *Petition for Preliminary Injunction* 23 filed by Terry A. Morgan (Attachments: # 1 Exhibit 21 - Petitioner's Proposed Order) (Carol, Colleen) Modified text on 12/19/2017 (ems). (Entered: 12/18/2017)
12/19/2017	28	NOTICE to attorney Jason M. Renner regarding recent filing 23 (ems) (Entered: 12/19/2017)

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